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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,072	07/27/2005	Kenya Yokoi	R2184.0364/P364	8917
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DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			EXAMINER AGUSTIN, PETER VINCENT	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 12/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/538,072

## Applicant(s)

YOKOI, KENYA

## Examiner

P. Agustin

## Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 2-6 and 13-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. This application is a 371 of PCT/JP03/15680, filed December 8, 2003.
2. Claims 1-15 are currently pending.

#### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

4. Figure 9 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

5. Claim 12 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, line 5; claim 8, line 3; and claim 9, lines 2-3 recite the limitation “the second index”. There is insufficient antecedent basis for this limitation in the claims because there is no previous mention of a “second index” in claims 1 & 2 to which claims 7-9 are dependent.

Claim 10 recites an optical disk being recorded with information “by using the information recording method as claimed in claim 6”. However, it is unclear how the method of claim 6 is used to record the information of claim 10 because claim 6 does not positively recite any steps of recording information. This unclear interrelation between claims 6 & 10 renders claim 10 indefinite.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 & 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaquette et al. (US 5,602,814).

In regard to claim 1, Jaquette et al. disclose an optical information recording method (see Figure 2) of an optical information recording and reproduction device (column 6, line 31: “recording or reading”) that uses a semiconductor laser (Figure 1, element 14) to record or reproduce data in an optical recording medium (10), said optical information recording method

comprising a step of: adjusting a calculated value of optimum recording power for recording data or an object value of recording power when data are being recorded (column 12, lines 20-24: “these PWM pulse durations are calibrated to an empirically determined optimal laser power level”; column 12, lines 38-44: “during a first data write operation (write command execution) during any recording session on a write-once disk or upon detecting a write error, the ALPC field 132 recorded laser test signal 142 is measured, as seen in FIG. 8. Then microprocessor 10, using a table lookup generated as set forth above and stored in microprocessor 10, calculates power level”), based on a detected value of an optical path difference of the optical recording medium (column 1, lines 52-56: “optical path contamination”; column 2, lines 23-24: “optical path variability”).

In regard to claim 11, Jaquette et al. disclose an optical information recording and reproduction device (Figure 1) that uses the semiconductor laser (14) to record or reproduce data in the optical recording medium (10) by using the information recording method (see claim 1 above).

***Allowable Subject Matter***

10. Claims 2-6 & 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 7-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record alone or in combination fails to teach or suggest:

in claim 2, *“wherein when calculating the optimum recording power before recording data in the optical recording medium, an optimum index indicating the optimum recording power is corrected with respect to a predetermined first index based on the detected value of the optical path difference of the optical recording medium, and the corrected optimum index is used as the calculated value of the optimum recording power, said predetermined first index being obtained by reproducing a trial write region that is recorded with recording power being varied stepwise”*;

in claim 4, *“wherein an object index indicating the optimum recording power is corrected and updated continually based on the detected value of the optical path difference of the optical recording medium with respect to a predetermined second index, and the corrected object index is used to correct the optimum recording power while recording, said predetermined second index being obtained from a detection signal associated with an amount of light reflected from the optical recording medium when data are being recorded in the optical recording medium”*; and

in claim 6, *“wherein an initial value of the optical path difference of the optical recording medium is obtained by reading out information of the optical path difference of the optical recording medium or information of a distribution of the optical path difference of the optical recording medium from pre-format information to calculate a detected value of the optical path difference before the data are recorded or when the data are being recorded”*.

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Claims 3, 5, 7-10 & 13-15 are dependent upon base claims having allowable subject matter.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Okumura et al. (US 7,206,351) disclose a signal quality evaluation device comprising a path metric calculating circuit; a Viterbi decoder; a threshold register; and a controller being a signal quality evaluating means, optimum reproducing power deciding means, and optimum recording power deciding means.

Chen et al. (US 7,242,652) disclose that for most optical recording systems, due to various factors affecting optical recording systems and optical recording media, such as changes in the thickness of recording dye layer and substrate characteristics of optical recording media, changes in recording points due to shifting in laser optical path length, the spatial position relationship of recording media with respect to the optical recording system, changes in recording characteristics of recording media due to temperature variations, etc., the optimum power level for generating the best incident recording light signal is prone to vary as well.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Agustin whose telephone number is 571-272-7567. The examiner can normally be reached on Monday-Thursday 8:30-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on 571-272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 2627